

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed September 22, 2004. At the time of the Office Action, Claims 1-18 and 23-43 were pending in this Application. Claims 19-22 and 44-67 were previously cancelled due to an election/restriction requirement. Claims 1-18 and 23-43 were rejected. Following the current amendments, Claim 2-4, 12-22, 24, 26 and 38-67 are all cancelled. Claims 1, 5, 23, 25, 30 and 35-36 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case.

Claim Objections

Claim 30 was objected to due to informalities. Applicants amend Claim 30 accordingly to overcome this amendment.

Rejections under 35 U.S.C. § 112

Claims 1, 2, 5-18, and 23-43 were rejected by the Examiner under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Applicants have amended Claims 1, 5, 23, 25 and 34-36 to recite nucleic acids having a sequence comprising SEQ.ID.NO:36 or polypeptides having a sequence of SEQ.ID.NO:37. As the Examiner pointed out, SEQ.ID.NOs:1, 32 and 34 all comprise SEQ.ID.NO: 36, which is clearly disclosed in the specification. Similarly, SEQ.ID.NOs:2, 33 and 35 all comprise SEQ.ID.NO:37, which is also disclosed in the specification. Accordingly, Applicants submit that the specification as filed provides adequate written description for a nucleic acid encoding levopimaradiene synthase and comprising SEQ.ID.NO.36 or for a nucleic acid encoding levopimaradiene synthase, the protein comprising SEQ.ID.NO.37.

Claims 38-43 have been cancelled and this no longer present any issues of similar wording.

Claim 35 has been amended to identify the relevant polypeptide by sequence rather than by reference to another claim.

Applicants have cancelled any claims directed to SEQ.ID.NOs:38 and 39, although Applicants reserve the right to address the Examiner's rejections and pursue claims including such sequences in a future application.

Double Patenting Rejection

The Examiner provisionally rejected Claims 1-18, 23-29, 31-35, 38, 39, and 41-43 based on the judicially created double patenting doctrine over Claims 1, 3, 25, 27, 29 and 31 of co-pending Application 10/041,018 filed January 7, 2002 (hereinafter "'018 application"). Applicants respectfully traverse the rejection. However, to reduce the cost and time required to obtain patent protection, a Terminal Disclaimer filed in compliance with 37 C.F.R. 1.32(b) is attached hereto. The Terminal Disclaimer is offered in the event the Examiner converts the provisional rejection to a rejection based on non-statutory double patenting grounds.

CONCLUSION

Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of Claims 1, 5-11, 23, 25 and 27-37 as amended.

Applicants authorize the Commissioner to charge Deposit Account No. 02-0383 of Baker Botts L.L.P. in the amount of \$130.00 for the Terminal Disclaimer filing fee.

Applicants additionally enclose an Information Disclosure Statement and authorize the Commissioner to charge Deposit Account No. 02-0383 in the amount of \$180.00 in connection with the IDS.

Applicants believe a fee of \$60.00 for a one-month extension of time for a small entity, which is respectfully requested, is due and a check in that amount is enclosed. Applicants believe there are no further fees due, however, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-0383 of Baker Botts L.L.P.

ATTORNEY DOCKET
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PATENT APPLICATION
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7

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2580.

Respectfully submitted,
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